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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/799,114

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7590

09/23/2009

REISING, ETHINGTON, BARNES, KISSELLE, P.C.

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* KENNETH S. BLOOM, STEPHEN A. EILERTSON and  
WENDELL D. WILLINGHAM

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Application No. 10/799,114  
Technology Center 3700

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Mailed: September 23, 2009

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Before QUITA GOULD *Supervisory Paralegal Specialist*  
GOULD, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 9, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

**PRIOR RETURN NOT ADDRESSED**

A prior “Order Returning Undocketed Appeal to Examiner” was mailed on August 7, 2009 where the Examiner was instructed that corrections were required. A review of the record reveals that the required corrections have not been made or have not been made in their entirety. The matters still requiring attention prior to docketing are identified as follows:

**EXAMINER’S ANSWER: GROUNDS OF REJECTION**

A review of the file finds that the grounds of rejection to be reviewed on appeal of the claims, as provided in the Examiner’s Answer, mailed October 12, 2007, under the heading “Grounds of Rejection to be Reviewed on Appeal,” is unclear. The grounds of rejection to be reviewed on appeal, as provided in the Examiner’s Answer must be consistent with the last Office Action of record, including any Advisory Action responsive to any after-final submissions. Furthermore, each ground of rejection to be reviewed on appeal must be identified and any new ground of rejection must be provided under the separate heading “New Grounds of Rejection” in the Examiner’s Answer and must include the approval of the Technology Center (TC) Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) §§ 1207.02 and 1207.03 (8<sup>th</sup> ed. Rev. 6, July 2008) for details.

A review of the Examiner’s Answer finds a new ground of rejection that has not been provided with the required heading “New Grounds of Rejection” and which does not include the approval of the TC Director or his/her designee. Specifically, claim 12 was not listed in any ground of rejection until the Examiner’s Answer, filed October, 12, 2007. Claim 12

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was added to the 102(b) rejection of claims 1, 3-5, 7, and 12. This constitutes a new ground of rejection.

Clarification of the record is required for all grounds of rejection to be reviewed on appeal for all claims.

### CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- (1) vacate the Examiner's Answer, mailed October 12, 2007;
- (2) generate a new Examiner's Answer setting forth the correct grounds of rejection and to correct other sections of the Answer, as may be required;
- (3) include the approval of the TC Director or his/her designee (as required for any new grounds of rejection); and
- (4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QG/ack

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